



Federal Communications Commission
Washington, D.C. 20554

August 16, 2011

DA 11-1406

Cris Beaty
Chief Financial Officer
Florida Keys Electric Cooperative Association, Inc.
91630 Overseas Highway
Tavernier, FL 33070-0377

In re: Florida Keys Electric Cooperative Association, Inc.
Request for Renewal and Reinstatement
Call Signs WPJD459 and WPJD460
File Nos. 0004721541 and 0004721577

Dear Mr. Beaty:

On May 9, 2011, Florida Keys Electric Cooperative Association, Inc. ("FKEC") filed a waiver request¹ to file late-filed applications² for renewal of license of Microwave Industrial/Business Pool (Multiple Address System (MAS)) Stations WPJD459 and WPJD460, which expired on February 19, 2011. Because FKEC filed its applications more than thirty days after expiration, FKEC requests as part of its applications waiver of Section 1.949(a) of the Commission's Rules³ to grant renewal of its late-filed application.⁴ For the reasons stated below, we deny FKEC's Waiver Request and dismiss its late-filed Renewal Applications.

The licenses for Stations WPJD459 and WPJD460 were last renewed on December 16, 2000, and expired on December 5, 2010.⁵ Our records indicate that the Wireless Telecommunications Bureau sent renewal reminder notices to FKEC on November 29, 2010.⁶ Section 1.949(a) of the Commission's Rules requires licensees to file renewal applications no later than the expiration dates of licenses.⁷ FKEC failed to do so, not filing until May 9, 2011, and requesting that Section 1.949(a) of the Commission's Rules be waived to allow acceptance of FKEC's late-filed applications.⁸

¹ Request for Waiver to Complete Renewal, File Nos. 0004721541 and 0004721577 (filed May 9, 2011) (Waiver Request).

² File Nos. 0004721541 and 0004721577 (filed May 9, 2011) (Renewal Applications).

³ 47 C.F.R. § 1.949(a).

⁴ Waiver Request.

⁵ File Nos. 0000284746, 0000284747 (granted Dec. 16, 2000).

⁶ Renewal Reminder Notice, Ref. Nos. 5062835, 5062836 (Nov. 29, 2010). The reminder notices were addressed to: ATTN: HARRIS J CHUSTZ JR, FLORIDA KEYS ELECTRIC COOPERATIVE ASSOC INC, 91605 Overseas Highway, Tavernier, FL 33070-0377.

⁷ 47 C.F.R. § 1.949(a).

⁸ *Id.*

FKEC explains that the renewal notice was not received by the proper person in its organization and that the license therefore expired before it was realized that it needed to be renewed.⁹

The Commission's policy regarding reinstatement procedures in the Wireless Radio Services is as follows: Renewal applications that are filed up to thirty days after the expiration date of the license will be granted *nunc pro tunc* if the application is otherwise sufficient under the Commission's Rules, but the licensee may be subject to an enforcement action for untimely filing and unauthorized operation during the time between the expiration of the license and the untimely renewal filing.¹⁰ Applicants who file renewal applications more than thirty days after the license expiration date may also request renewal of the license *nunc pro tunc*, but such requests will not be routinely granted, will be subject to stricter review, and also may be accompanied by enforcement action, including more significant fines or forfeitures.¹¹ In determining whether to reinstate a license, we consider all of the facts and circumstances, including the length of the delay in filing, the reasons for the failure to timely file, the potential consequences to the public if the license should terminate, and the performance record of the licensee.¹² Taking into account all the facts and circumstances of the instant matter, including the specific factors set forth by the Commission, we conclude that FKEC's Waiver Request should be denied.¹³

Under the Commission's rules, licensees must file renewal applications no later than the expiration date of the license for which renewal is sought.¹⁴ In fact, licenses automatically terminate upon the expiration date, unless a timely application for renewal is filed.¹⁵ Applicants may, however, file an application for renewal and request for waiver of the filing deadline if the renewal application is not filed in a timely manner. A waiver of the Commission's rules may be granted where the applicant demonstrates that (1) the underlying purpose of the rule would not be served or would be in the public interest; or (2) in view of unique or unusual factual circumstances of the instant case, application of the rule would be inequitable, unduly burdensome or contrary to the public interest, or the applicant has no reasonable alternative.¹⁶

We do not believe that FKEC has satisfied either waiver prong. An inadvertent failure to renew a license in a timely manner is not so unique and unusual in itself as to warrant a waiver of the Commission's Rules.¹⁷ Further, each licensee is solely responsible for knowing the terms of its license

⁹ Waiver Request.

¹⁰ Biennial Regulatory Review - Amendment of Parts 0, 1, 13, 22, 24, 26, 27, 80, 87, 90, 95, 97, and 101 of the Commission's Rules to Facilitate the Development and Use of the Universal Licensing System in the Wireless Telecommunications Services, *Memorandum Opinion and Order on Reconsideration*, WT Docket No. 98-20, 14 FCC Rcd 11476, 11485 ¶ 22 (1999) (*ULS MO&O*).

¹¹ *Id.* at 11486 ¶ 22.

¹² *Id.* at 11485 ¶ 22.

¹³ *See, e.g.*, WSYX Licensee, Inc., *Order*, 15 FCC Rcd 19084 (WTB PSPWD 2000) (denying a request for waiver of Section 1.949 of the Commission's Rules to allow submission of late-filed renewal applications after the licenses expired, and dismissing the subject applications).

¹⁴ 47 C.F.R. § 1.949(a).

¹⁵ 47 C.F.R. § 1.955(a)(1).

¹⁶ 47 C.F.R. § 1.925(b)(3).

¹⁷ *See* Mr. Roger Given, Vice President, Transmission and Storage Operations, Columbia Gas Transmission Company, *Letter*, 24 FCC Rcd 11769 (WTB BD 2009) (*Columbia Gas*); Fresno City and County Housing

and submitting a renewal application to the Commission in a timely manner.¹⁸ While we note FKEC's allegations concerning a renewal reminder notice, a renewal reminder is merely a courtesy, and whether or not it receives the reminder, the licensee is responsible for filing a timely renewal application with the Commission.¹⁹ FKEC makes no showing that the underlying purpose of the rule would not be served or would be frustrated by application to FKEC in the instant case. Nor does FKEC show how administrative oversight constitutes unique or unusual factual circumstances.²⁰

If FKEC wishes to obtain a new regular authorization for this station, it may file a new, properly coordinated application.²¹ If it needs to continue operating the facilities in the meantime, it can seek special temporary authority (STA) pursuant to Section 1.931 of the Commission's Rules.²² In view of the foregoing, we find that grant of FKEC's requested waiver is not in the public interest.

Accordingly, IT IS ORDERED, pursuant to Sections 4(i) and 309 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 309, and Section 1.925 of the Commission's Rules, 47 C.F.R. § 1.925, that the request for waiver of Section 1.949(a) of the Commission's Rules filed May 9, 2011 by Florida Keys Electric Cooperative Association, Inc. IS DENIED, and application File Nos. 0004721541 and 0004721577 SHALL BE DISMISSED.

These actions are taken under delegated authority pursuant to Sections 0.131 and 0.331 of the Commission's Rules, 47 C.F.R. §§ 0.131, 0.331.

Sincerely,

John J. Schauble
Deputy Chief, Broadband Division
Wireless Telecommunications Bureau

Authorities, *Order on Reconsideration*, 15 FCC Rcd 10998, 11002 ¶ 11 (WTB PSPWD 2000) (citing Plumas-Sierra Rural Electric Cooperative, *Order*, 15 FCC Rcd 5572, 5575 ¶ 9 (WTB PSPWD 2000)).

¹⁸ *ULS MO&O*, 14 FCC Rcd at 11485 ¶ 21; Amendment of Parts 1 and 90 of the Commission's Rules Concerning the Construction, Licensing, and Operation of Private Land Mobile Radio Stations, *Report and Order*, PR Docket No. 90-481, 6 FCC Rcd 7297, 7301 n.41 (1991).

¹⁹ See Biennial Regulatory Review - Amendment of Parts 0, 1, 13, 22, 24, 26, 27, 80, 87, 90, 95, 97, and 101 of the Commission's Rules to Facilitate the Development and Use of the Universal Licensing System in the Wireless Telecommunications Services, *Report and Order*, WT Docket No. 98-20, 13 FCC Rcd 21027, 21071 ¶ 96 (1998).

²⁰ *Cf. Columbia Gas, supra*; Southwest Central Rural Electric Cooperative Corporation, *Order on Reconsideration*, 16 FCC Rcd 5499, 5500 n.7 (WTB PSPWD 2001) (licensee is responsible for failure to provide correct contact information).

²¹ See 47 C.F.R. § 101.103.

²² See 47 C.F.R. § 1.931.